

Prince Declaration

Exhibit 4

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

HACHETTE BOOK GROUP, INC.,
et al.,

Plaintiff

vs.

INTERNET ARCHIVE, et al.,

Defendant

C.A. No. 1:20-CV-041160-JGK

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ZOOM VIDEOTAPED DEPOSITION OF

IMKE C. REIMERS, PH.D.

FRIDAY, JUNE 3, 2022

10:13 a.m. - 6:40 p.m.

BOSTON, MASSACHUSETTS

Reported by: Sandra A. Deschaine, SCR, RPR,
CLR, CRA

Job No. 5255420.

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1 the number of books that had been sold,
2 number of units that had been sold of any
3 title?

4 A. Yes, that was what we needed to do
5 for that paper.

6 Q. And the focus of the paper was not
7 our Amazon book sales rankings representative
8 of the full market?

9 A. That is correct.

10 Q. Okay. Under the materials
11 considered, when you listed the various
12 things you looked at to write your expert
13 report, one of the things you looked at was
14 the sales records for all of the works in
15 suit, correct?

16 A. Which sales records did you mean?

17 Q. So all four publishers for the 127
18 works in suit, they each provided the sales
19 figures for their books, correct?

20 MR. GRATZ: Maybe it's easier with
21 the term "the sales figures," but you
22 can answer.

23 A. Yeah, so -- yes, yes, they
24 provided some annual sales figures for
25 varying lengths of years, yes.

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1 BY MS. STEINMAN:

2 Q. Perfect. Yes. Okay.

3 And would it be fair that nobody
4 can simply look at those sales figures and
5 determine the impact of the Internet Archive,
6 because of all the other reasons why sales of
7 a particular title can go up or down?

8 MR. GRATZ: Objection, incomplete
9 hypothetical and vague.

10 A. Yes, to determine the effect of
11 the Internet Archive, one would have to
12 control for other factors that might have
13 happened.

14 MS. STEINMAN: Okay. I'd like to
15 introduce, as Exhibit Number 3, an
16 article that you wrote called "Can
17 Private Copyright Protection Be
18 Effective? Evidence from Book
19 Publishing" by Imke Reimers, Journal of
20 Law and Economics May 2016.

21 (Exhibit 3, HeinOnline, Can Private
22 Copyright Protection Be Effective? Evidence
23 from Book Publishing, by Imke Reimers,
24 Journal of Law and Economics May 2016, marked
25 for identification.)

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1 about -- well, 126 titles that I'm following.

2 BY MS. STEINMAN:

3 Q. Most of those books were
4 originally published several years ago, going
5 back as far as the first half of the 20th
6 Century, correct?

7 If you look at page 416 of your
8 article, that will help you out.

9 A. Yeah, I found it right now. Yes.
10 Thank you.

11 Q. Is that accurate that, quote,
12 "Most of the works were originally published
13 several years ago, going back as far as the
14 first half of the 20th Century, although all
15 titles are still protected by copyright"?

16 Is that accurate?

17 A. Yes, that's what it says in the
18 text.

19 Q. And in the middle of page 416, it
20 says that RosettaBooks list, quote, "consist
21 largely of backlist titles ranging from
22 well-known classics to works that are less
23 well-known today. Most of its titles were
24 originally published more than a decade ago."

25 Is that accurate?

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1 A. Yes.

2 Q. And so these titles were similar
3 in publication dates to the titles on the
4 Internet Archive Books to Borrow collection,
5 correct?

6 MR. GRATZ: Objection, lacks
7 foundation, vague.

8 A. Yes. They -- to the extent that
9 they were also several years old, yes.

10 BY MS. STEINMAN:

11 Q. Were there any other differences
12 between the titles that you were looking at
13 published by RosettaBooks and the works in
14 suit in this case?

15 MR. GRATZ: Lacks foundation.

16 A. I mean -- my guess is that there's
17 no big overlap, if any, across the titles.
18 The types of titles might be similar.

19 Q. Okay. Fair enough.

20 So in your article you look to see
21 the impact when the publishers' agent sent
22 takedown notices to websites making
23 unauthorized distributions of the titles, and
24 also requests the search engines to delist
25 the unauthorized websites, correct?

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1 iPads, it is better if they are able to read
2 them on their iPads than if they're not.

3 Q. What was your understanding --
4 going back to your 2016 article. What was
5 your understanding of why people were going
6 to these websites with the unauthorized
7 content? Was it your understanding that they
8 were going there to read the books?

9 A. I don't know why they would go,
10 but that was -- would be my assumption.

11 Q. And, to your knowledge, is there
12 anything materially different about the type
13 of user that was getting unauthorized copies
14 from the pirate websites in your 2016 study
15 as compared to users of the Internet
16 Archive's free digital library.

17 A. I don't know anything about the
18 users of either of them. I -- yeah, no. I
19 just don't know who goes to those websites.
20 I don't observe any IP addresses or anything
21 else about them.

22 Q. #But, sitting here today, you have
23 no reason to believe, if people go to the
24 pirate websites to read an e-book, you have
25 no evidence, sitting here today, that they

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1 page 417.

2 Q. Okay. In your article, you
3 concluded that, after publishers, agents, and
4 takedown notices and delisting requests, that
5 those piracy protections made it more
6 difficult for the members of the public to
7 find the free unauthorized digital books,
8 correct?

9 A. Yes, that is correct.

10 Q. And you determined that these
11 piracy protections had a significant impact
12 on the sales of e-books, correct?

13 A. Yes, this is what I found, for
14 example, in Table 2.

15 Q. In other words, you found that
16 when members of the public had more
17 difficulty getting a free e-book from an
18 unauthorized website, some of them were
19 willing to pay money to buy the e-book,
20 correct?

21 A. That is correct, although the
22 level of increased difficulty is -- I don't
23 know how much more difficult it had become
24 there.

25 Q. I'm sorry. I didn't follow.

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1 is a net decrease in the number of pirate
2 websites and in which, say, Google doesn't
3 list the pirate websites, in those
4 circumstances, some consumers will pay to buy
5 an e-book since they can't get it for free
6 from the pirate website?

7 MR. GRATZ: Lacks foundation.

8 BY MS. STEINMAN:

9 Q. Let me rephrase. I can see I --
10 let me make it more easier for you.

11 When I say when members of the
12 public have more difficulty getting a free
13 e-book, all I'm saying is that the piracy
14 protections have succeeded and made it harder
15 to find.

16 So if it's harder to find, some
17 people are going to -- you found that some
18 people are going to pay for the commercial
19 e-book?

20 A. Yes, that was my interpretation in
21 the paper, yes.

22 Q. On page 421 -- on the bottom of
23 page 421, you found, quote, "Electronic books
24 can be regarded as the closest substitute for
25 pirated versions...physical editions of the

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1 calls for speculation.

2 A. So my answer is that -- yeah, I
3 can't quite tell because it depends on how
4 people learn about the books. And if people
5 learn about the books, say, via Goodreads or
6 something like that, then I don't know how
7 much of a difference these larger
8 budgeting -- or larger marketing budgets
9 make.

10 MS. STEINMAN: Okay. Since our
11 tape is about to run out. Let's take a
12 short break. I know that you want to
13 leave by 7:30. So we're going to try to
14 keep breaks short and lunch short since
15 I share your goal to end by 7:30. So
16 let's take, say, a five-minute break.

17 THE VIDEOGRAPHER: Okay. Going
18 off the record. The time is 11:48 a.m.
19 This is the end of media unit 1.

20 (Recess taken at 11:48 a.m. to 11:58.)

21 THE VIDEOGRAPHER: We are back on
22 the record. The time is 11:58 a.m.
23 This is the beginning of Media Unit 2.

24 BY MS. STEINMAN:

25 Q. Would you please turn to your

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1 rebuttal report, which should be Exhibit 2?

2 A. Yep.

3 Q. And if you would go to paragraphs
4 17 through 19.

5 A. Okay.

6 Q. Do those paragraphs contain all of
7 the reasons why the results of your 2016
8 paper are not indicative, in your view, of
9 the effects of the Internet Archive on the
10 plaintiffs?

11 A. I'm not sure if they contain all
12 of the reasons. They contain the reasons I
13 could think of.

14 Q. Are there any other reasons that
15 come to mind?

16 A. None that I could think of so far.

17 Q. The first reason is that, "The
18 digital lending interface at the Internet
19 Archive has more of an appearance of a
20 library than the cyberlocker hosts as it
21 allows people to borrow titles for limited
22 time periods rather than keep them on their
23 computers indefinitely. The fact that one
24 does not own the book when reading it via
25 Internet Archive can diminish the experience

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1 of reading it, making consumers more likely
2 to purchase a full edition later."

3 Is that an accurate quote from
4 your report?

5 A. Yes, that's what it says in
6 paragraph 19.

7 Q. Do you have any support that you
8 can cite for your second sentence?

9 A. No, I don't have any empirical
10 evidence of that.

11 Q. Are you aware that at the time of
12 suit, the Internet Archive allowed its users
13 to download a book for 14 days?

14 A. I read those terms when I reviewed
15 the Prince report.

16 Q. And are you aware that currently
17 the Internet Archive allows users to download
18 a book for 14 days so long as they have more
19 than one copy?

20 A. I don't think I knew the exact
21 terms.

22 Q. Are you aware that the Internet
23 Archive allows users to take an e-book out
24 again if they haven't finished it?

25 MR. GRATZ: Lacks foundation.

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1 A. Yes, that has been my experience
2 when I borrowed a book.

3 BY MS. STEINMAN:

4 Q. And are you aware that many public
5 libraries loan books for around 14 days?

6 A. Yes, that is my understanding, 14
7 days or 3 weeks.

8 Q. Would you agree with me that, in
9 many instances, people can read a book in 14
10 days?

11 MR. GRATZ: Lacks foundation,
12 incomplete hypothetical.

13 A. In several instances, yes.

14 BY MS. STEINMAN:

15 Q. Would it be accurate to say that
16 the fact that one does not own the book, when
17 reading it via the Internet Archive, means
18 that some consumers are more likely to
19 purchase a full edition later on, but that
20 other consumers may use the Internet Archive
21 as a substitute for purchasing a full edition
22 later on?

23 MR. GRATZ: Objection, vague,
24 lacks foundation.

25 A. So this, I think, is another

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1 empirical question, where it's possible that
2 what you're saying is correct, but if I don't
3 see the data to study this or to examine
4 this, I don't know what people are doing.

5 BY MS. STEINMAN:

6 Q. Let's turn to your second reason.

7 You said, quote, "Second, in my
8 2016 paper, I cannot distinguish what type of
9 content leads to harm because my variable of
10 interest describes whether the company has
11 found an infringing website for the title at
12 all and not which type of content was taken
13 down. If e-book sales only increased after a
14 certain type of content was removed and if
15 that content is different from that offered
16 through the Internet Archive, then I cannot
17 draw inferences from that study either."

18 Do you see that?

19 A. Yes, I do.

20 Q. What different content were you
21 contemplating here?

22 A. I was referring to the type of
23 piracy website; for example, cyberlockers or
24 peer-to-peer platforms or the format of the
25 book that the piracy site was in.

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1 Q. Okay. As we sit here today, do
2 you know of any material differences between
3 the formats of the books in the 2016 article
4 and the Internet Archive?

5 MR. GRATZ: Lacks foundation,
6 calls for speculation.

7 A. Yeah, I don't quite know what the
8 2016 article -- what exactly the formats of
9 the books were except that I think --
10 (Reporter clarification.)

11 A. Oh, the formats, format.

12 I think it says it in the 2016
13 article. I'm happy to take a look again.

14 BY MS. STEINMAN:

15 Q. Yes, take a look. As I recall, it
16 says that most of them were scans, not ripped
17 e-books.

18 MR. GRATZ: Objection.
19 (Reporter clarification.)

20 MS. STEINMAN: Not ripped e-book
21 files.

22 MR. GRATZ: Objection, lacks
23 foundation, misstates the content of the
24 document.

25 A. Yeah, so on page 415 in my 2016

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1 article, I state -- and you mentioned that
2 earlier, sorry, thank you -- "Most book
3 contents, 65 percent is either HTML or PDF
4 format." That makes it, you know, two-thirds
5 and one-third something else.

6 What I don't know -- actually, I
7 apologize, it's -- we talked a little too
8 much. Can you remind me of the exact
9 question again?

10 BY MS. STEINMAN:

11 Q. Yes.

12 Is there anything materially
13 different about the content of the pirate
14 websites that you studied in 2016 and the
15 content on the Internet Archive?

16 MR. GRATZ: Lacks foundation,
17 calls for speculation.

18 A. Okay. Thank you.

19 I don't know. I don't know what
20 content -- which exact types of content were
21 taken down for my 2016 study, and, therefore,
22 I don't know if there was anything materially
23 different.

24 BY MS. STEINMAN:

25 Q. Let's look at your third reason.

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1 Third -- this is, again, a quote,
2 "Third, I am not able to compare the scale
3 (and number of site visitors) of the Internet
4 Archive to that of the infringing sites in my
5 2016 paper. If traffic to the infringing
6 sites in my 2016 paper was higher than
7 traffic to each book's page on the Internet
8 Archive, then the Internet Archive might have
9 been too small to cause a sales decrease."

10 So your view is that if the
11 traffic to the infringing sites in your 2016
12 paper was higher than traffic to each book's
13 page on the Internet Archive, then the
14 Internet Archive might have been too small to
15 cause a sales decrease; is that correct?

16 A. Yes, that's what it says in my
17 report.

18 Q. What, if anything, do you know
19 about the scale of the traffic to the
20 infringing sites in your 2016 paper?

21 A. I don't know anything about that
22 scale.

23 Q. Would you agree that scale matters
24 to the ability to detect a sales change?

25 MR. GRATZ: Lacks foundation,

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1 sites. It is likely that removing one site
2 has little effect on sales through other
3 channels."

4 If there were 88 websites that
5 were clones of the Internet Archive, do you
6 think there would be an impact on the
7 publishers' sales through authorized
8 channels?

9 MR. GRATZ: Lacks foundation,
10 calls for speculation.

11 A. I'll have to kind of give the same
12 answer here as well.

13 Only if the -- if the Internet
14 Archive and -- you know, is a valuable
15 substitute to the other products and -- yeah,
16 no, that's -- only then is it possible.

17 BY MS. STEINMAN:

18 Q. Okay. I will move on, and we'll
19 come back to this at a later time.

20 Let's talk about controls in your
21 2016 article.

22 You looked at several control
23 variables in the 2016 article, which is
24 Exhibit 3, to make sure that your results
25 were sound, correct?

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1 A. That is correct.

2 Q. And do you consider control
3 variables to be important for a study to be
4 reliable?

5 A. That depends a lot on the setting
6 of the study. It depends on the data and how
7 they are built and what other parts are
8 automatically controlled for.

9 Q. If you would look at page 422,
10 please.

11 A. Yep.

12 Q. And, again, this is page 422 of
13 your 2016 article.

14 At the top of the page, it says,
15 quote, "Of course, Table 2 does not take into
16 account several factors that may contribute
17 to an increase in e-book sales around the
18 time that a title becomes protected. It
19 could be that a move into protection
20 coincides with the publication of a new
21 edition of a title, with title and
22 age-related fluctuations in demand or with
23 price promotions."

24 Do you see that?

25 A. Yes, I do.

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1 Q. So if I understand you correctly,
2 it's plausible that if the publication --
3 that the publication of a new edition might
4 affect e-book sales for a title at a given
5 point in time, and so you have to look at
6 that?

7 MR. GRATZ: Objection, vague.

8 Misstates the content of the document.

9 BY MS. STEINMAN:

10 Q. Is a new edition something that
11 might plausibly impact e-book sales at -- you
12 know, at a specific point in time?

13 MR. GRATZ: Incomplete
14 hypothetical. You can answer.

15 A. Yes. When we have -- when we look
16 at a title's unit sales, it is often sensible
17 to control for things like additional
18 editions.

19 BY MS. STEINMAN:

20 Q. And you controlled for this factor
21 in your 2016 article, Yes?

22 A. Yes, I did.

23 Q. Okay. In this case, you looked at
24 the Internet -- the potential impact of the
25 Internet Archive on publishers' Amazon sales

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1 rankings at three points in time: One, when
2 the work was first made available on the
3 Internet Archive; second, when the National
4 Emergency Library started; and, third, when
5 the work in suit was removed from the
6 Internet Archive, correct?

7 A. That is correct.

8 Q. And did you control for the
9 publication of new editions for each one of
10 those three time periods?

11 A. No, I did not.

12 Q. Okay. Back to your 2016 article.
13 In your 2016 article, you said
14 that you wanted to look at title and
15 age-related fluctuations in demand.

16 What -- could you explain further
17 what those are, what you mean by that?

18 A. So I'm just looking at Table 3 for
19 that.

20 Yeah, okay. So the age -- the age
21 specific fluctuations, these are the
22 variables that I include at the -- toward the
23 bottom of Table 3, where we have title age in
24 months and title H-squared. This is a way
25 for me to control essentially for the fact

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1 that the sales trajectory can change for a
2 title over time, and it can change so -- in a
3 nonlinear way where maybe the decay is
4 quicker at first and then kind of peters off
5 or something like that. That's -- having
6 these extra control variables in this
7 regression helps me account for these
8 fluctuations over time.

9 The title-specific fluctuations --
10 now, again, I wrote this paper several years
11 ago, but my understanding and my guess is
12 that what I meant by that is what I wrote in
13 the table notes. At the end of the table
14 notes, I write that "All regressions include
15 title and monthly time fixed effects."

16 These title fixed effects are
17 essentially controlling for, you know, the
18 fact that some titles are just inherently
19 more popular than other titles. So, for
20 example, the Space Odyssey might be more
21 popular overall than some other title, whose
22 name I can't remember.

23 And having these fixed effects,
24 that basically gives us a -- you know, a
25 different baseline level of sales for each of

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1 these titles. And we need to control for
2 that, and, therefore, I controlled for that
3 here.

4 Q. Do title and age fluctuations --
5 I'm sorry. Let me start again.

6 Do title and age-related
7 fluctuations in demand plausibly affect the
8 e-book sales for a title at any given point
9 in time?

10 A. I'm sorry. I'm a little tripped
11 up by the word "affect" in this context.

12 Q. Why don't I use the word "impact."

13 Do title and age-related
14 fluctuations in demand plausibly impact the
15 e-book sales for a title at a given point in
16 time?

17 MR. GRATZ: Objection, incomplete
18 hypothetical.

19 A. The two are very closely related.
20 The fluctuations and demand show up as
21 fluctuations in sales.

22 BY MS. STEINMAN:

23 Q. And in your 2016 paper, you
24 accounted for title-specific fluctuations and
25 demand by controlling for that factor using

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1 Google trend search volume, correct?

2 A. Yes.

3 Q. And did you, you know, control for
4 title-specific fluctuations in other ways as
5 well?

6 A. So I controlled with the search
7 volume and the general trends in sales
8 trajectories.

9 Q. Okay. Did you control for title
10 and age-related fluctuations in demand in
11 your analysis of the Amazon sales rankings in
12 your expert reports in this case?

13 A. Yes, I did. In both reports, in
14 the main report -- or in the initial report
15 and also in the rebuttal, I had the same, in
16 that case, edition age controls in the
17 regressions, so similar to the title age
18 controls that I had in the 2016 article.

19 And as a response to Dr. Prince's
20 report, I did include the number of ratings
21 as well as the average star rating as an
22 additional control.

23 The number of ratings on Amazon
24 is -- seems like a good proxy for these title
25 demand fluctuations, which I controlled for

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1 with the Google search volume in my 2016
2 paper.

3 Q. And did you do any other controls
4 related to title and age-related fluctuations
5 in the expert reports?

6 A. In my rebuttal report, I also
7 controlled for prices.

8 Q. But I'm talking about title and
9 age-related fluctuations.

10 A. So, again, I did have the --
11 sorry. Can you actually explain then what
12 you mean with the title and age related?

13 Q. I'm using it in the same sense as
14 you used it in your 2016 article.

15 MR. GRATZ: Lacks foundation,
16 vague without looking at a particular
17 portion of that article.

18 A. Yeah, so I'm looking at Section
19 5.2 again in that article. And I think I'll
20 just have to read it a little more closely to
21 answer that.

22 BY MS. STEINMAN:

23 Q. Go ahead.
24 (Witness reviewing document.)

25 A. So the problem that I have here in

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1 answering your question, is I don't see where
2 I actually define title and age-related
3 fluctuations. I just see how I respond to
4 them in the article.

5 Q. Okay. And did you perform the
6 same controls for title and age-related
7 fluctuations in your expert reports as you
8 did in the 2016 article?

9 A. No, I did not use the exact same
10 controls.

11 Q. So you mentioned that you looked
12 at Amazon star rankings. Those are just the
13 stars that consumers put on Amazon to say
14 whether they like or don't like a book,
15 right?

16 MR. GRATZ: Objection. Vague in
17 its use of the term "rankings," which,
18 Linda, I'm not sure is what you meant to
19 say.

20 MS. STEINMAN: It is not. Okay.
21 Why don't I just ask Dr. Reimers.

22 BY MS. STEINMAN:

23 Q. What are Amazon star ratings?

24 A. Better, yes. Sorry.

25 So I had two controls for these

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1 ratings in my rebuttal report. The one was
2 the average star rating, so some number
3 between, say, 1 and 5.

4 I also had a separate control in
5 that rebuttal that accounts for the number of
6 reviews that are underlying that average star
7 rating. This number of reviews that are
8 underlying the star rating should be closely
9 related to the overall interest for this
10 title; and, in fact, it is specifically
11 Amazon-related rather than relatively broad.

12 Q. Star ratings are added to Amazon
13 by consumers, correct? A consumer read the
14 book or doesn't even read the book, and they
15 write a review on Amazon and give the book a
16 couple stars between 1 and 5; is that right?

17 A. Yes. Many of the reviews
18 underlying these ratings are by people who
19 have bought the book on Amazon. As far as I
20 know, I'm about maybe 80 percent sure of
21 this, that you don't have to have bought the
22 product on Amazon in order to leave a review.

23 Q. And on what basis do you contend
24 that the number of reviews by consumers, who
25 are giving star ratings, correlates with the

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1 title and age-related fluctuations in demand?

2 Do you have any empirical evidence
3 of that?

4 A. I don't have any firsthand
5 empirical evidence of this. But we do
6 often -- sorry. Let me say that second part
7 again.

8 It is -- in my field, it is -- it
9 has been -- sorry. Let me try one more time.

10 In my field in the past, people
11 have used reviews or new reviews, in fact, as
12 a proxy for demand or, in fact, even as a
13 proxy for sales of a product.

14 Q. And have any of those people
15 provided empirical evidence that the number
16 of individuals reviewing a book on Amazon
17 directly correlates with the sales of a book?

18 A. I don't know for certain, although
19 I could even imagine that I have provided
20 some evidence to that extent.

21 Q. But, as you sit here today, you
22 don't remember that?

23 A. I would have to look at a -- at my
24 2021 report with Dr. Waldfogel on the
25 pre-purchase information. There might be a

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1 foundation in its use of the word
2 "still." Misstates the content of the
3 document.

4 A. Yeah, so it's -- so we were -- we
5 were mostly talking about Google Books in
6 this case, so that means I'm -- and, in fact,
7 as I think I stated earlier, I was only
8 tangentially familiar really with the
9 Internet Archive up until around then. So I
10 can't -- at that point, I wasn't familiar
11 with the scale of the Internet Archive.

12 BY MS. STEINMAN:

13 Q. Fair enough.

14 Let's look at Section 5 of your
15 paper titled "Discussion."

16 A. Okay.

17 Q. Tell me when you're there.

18 A. I'm there.

19 Q. Okay. The second paragraph toward
20 the bottom of the page, could you read the
21 sentence beginning "Many publishers are
22 opposed"?

23 The two sentences. Do you see
24 that?

25 A. Yes, I see that.

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1 So those -- yeah, that text reads
2 "Many publishers are opposed to mass
3 digitization projects driven by concerns
4 around cannibalization. This is a reasonable
5 reaction, given that the mass digitization
6 projects typically digitize work without the
7 publishers' consent and without explicit
8 licensing fees that would generate direct
9 revenue."

10 Q. Okay. Can you explain what you
11 meant by publishers' concerns about
12 cannibalization in this paragraph?

13 A. So it's been a while since I've --
14 you know, since that draft of it, so I'm --
15 you know, I'll have to put my 2020 hat on
16 here.

17 So with cannibalization, I mean,
18 what we usually mean, as economists at least
19 and my -- I would assume that that's what I
20 meant here as well, is that -- is the
21 possibility that a different -- or in this
22 case, that a different -- another edition or
23 a different edition of a title could displace
24 sales of an original edition of the same
25 title.

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1 Q. So if we were to put it in the
2 context of the Internet Archive, that the
3 Internet Archive could potentially displace
4 sales of the book publishers' authorized
5 books.

6 MR. GRATZ: Objection, lacks
7 foundation. Misstates the content of
8 the document, vague.

9 A. If we -- yes, and -- sorry, one
10 second.

11 BY MS. STEINMAN:

12 Q. All I'm asking is --

13 A. There is the possibility exactly
14 that these digitization efforts, for example,
15 Internet Archive, could displace sales.

16 Q. Okay. And can you explain for the
17 record what explicit licensing fees you were
18 referencing in the passage that you read?

19 "This is a reasonable reaction
20 given that mass digitalization projects
21 typically digitize work without the
22 publishers' consent and without explicit
23 licensing fees that would generate direct
24 revenue."

25 A. So, again, it's been a while, but

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1 I would think that this is a -- yeah, just a
2 reference to these digitization -- mass
3 digitization efforts not paying publishers a
4 licensing fee to then distribute the books.
5 (Reporter clarification.)

6 THE WITNESS: To then distribute
7 the books.

8 BY MS. STEINMAN:

9 Q. The plaintiff publishers usually
10 get paid fees by libraries lending digital
11 books, right?

12 MR. GRATZ: Lacks foundation.

13 A. Yes, that's my understanding.

14 BY MS. STEINMAN:

15 Q. In your expert report, you did not
16 address the plaintiffs' loss of these
17 licensing fees, correct? That was not one of
18 the things you looked at?

19 MR. GRATZ: Objection, lacks
20 foundation, incomplete hypothetical.

21 A. No, I did not look at the direct
22 amount of money that publishers would have
23 gotten from just the licensing of the books.

24 BY MS. STEINMAN:

25 Q. Okay. Let's move to the later

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1 Amazon's print sale rankings? If you were
2 going to explain this to the jury, what is an
3 Amazon print sale ranking?

4 A. So the Amazon print sales
5 rankings, in general, show, you know, our --
6 give us an idea about how many books have
7 been sold over some period of time in the
8 past, with, you know, higher rankings,
9 meaning more books have been sold.

10 Q. So, in other words, the book
11 that's listed as number 1, presumably, Amazon
12 has determined that that book has the most
13 sales of any book. Is that what it
14 determines?

15 A. So the term "the most sales" is a
16 little vague. It's, you know, over some
17 period of time in the past, where more recent
18 sales are weighted more heavily.

19 Q. Does Amazon publish their
20 algorithm?

21 A. Not that I know. I haven't seen
22 it.

23 Q. And for any number of reasons,
24 could it be something other than a straight
25 calculation of the actual sales ranking of a

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1 book as compared with other titles; is there
2 some discretion in there?

3 MR. GRATZ: Vague.

4 A. So there's some -- a possibility
5 that Amazon bases its sales rankings on
6 something other than sales, although all
7 academic work that I'm aware of treats Amazon
8 sales rankings as a function of Amazon sales.

9 BY MS. STEINMAN:

10 Q. Okay. Now, Amazon print sales
11 rankings don't necessarily tell you how much
12 revenue a title is making, correct?

13 A. That is correct, they are likely
14 related but not necessarily the same.

15 Q. Okay. So let's say on week number
16 1, number 10 on the list is a legal thriller
17 by John Grisham, and then let's say on week
18 number 2, Michelle Obama's autobiography
19 # "Becoming" is released, and it sells a huge
20 number of copies and it debuts at number 1 on
21 the list.

22 Assuming that no other big books
23 come out that week, that would bump John
24 Grisham's legal thriller to number 11 on the
25 list, right?

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1 A. Under those assumptions, yes.
2 Actually, sorry, let me -- let me take that
3 back.

4 Under those assumptions, that is
5 likely, although, of course, sales of the
6 other books could have also changed.

7 Q. Let's assume the sales of all of
8 the books stayed the same. The only thing
9 that happened was Michelle Obama released her
10 beautiful autobiography and it shot to
11 number 1 on the list.

12 A. Okay.

13 Q. That doesn't necessarily mean that
14 the revenues from John Grisham's legal
15 thriller had gone down, correct?

16 A. That is correct.

17 Q. In fact, they could have either
18 remained the same or gone up. It's just that
19 Michelle Obama's book was selling zillions of
20 copies?

21 A. That is correct.

22 Q. So Amazon print sales rankings are
23 not an exact predictor of revenue?

24 A. They are not a -- they're not a
25 direct predictor of revenue.

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1 rankings?

2 A. That is correct.

3 Q. Okay. Do you consider Amazon's
4 print sale rankings to be representative of
5 the entire market of all the plaintiff -- all
6 the plaintiffs' customers?

7 MR. GRATZ: Vague.

8 A. So, again, there's -- so on one
9 hand I -- in my report, in fact, I refer to
10 somebody else who mentions that Amazon does
11 account for 50 percent of the market,
12 approximately. Being more specific about the
13 total effect -- or how representative Amazon
14 is with regard to the other share or the
15 share that is not -- that does not come from
16 Amazon, I can't really say much about that
17 because I don't observe those data.

18 BY MS. STEINMAN:

19 Q. For your review of the Amazon
20 data, to be a reliable measure of the impact
21 of the Internet Archive, wouldn't it be
22 critical that the Amazon print sale rankings
23 are representative of the entire market?

24 A. I want -- I want to look at -- I
25 wrote something about that in my initial

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1 report. I would just like to kind of look at
2 that.

3 Q. Absolutely.
4 (Witness reviewing document.)

5 A. Yeah, so the biggest thing that I
6 need to worry about is -- and this, by the
7 way, in paragraph 41 of my initial report, is
8 that -- that the evolution of sales is
9 different on Amazon than it is through other
10 channels. While I don't have data to support
11 that they are the same, I also don't have a
12 reason to believe they are different.

13 Q. Okay. But you certainly did not
14 do any empirical study to determine whether
15 the Amazon print sale rankings is
16 representative of the entire market?

17 A. Again, the only thing -- as I
18 mentioned earlier this morning, I think, the
19 only thing that I have done, which was in the
20 past, was look for a connection between
21 Amazon sales rankings and the best seller
22 unit sales that are on a weekly level.
23 Beyond that, I haven't done anything.

24 Q. Okay. Amazon print sale rankings
25 do not include library channel sales,

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1 correct?

2 MR. GRATZ: Lacks foundation.

3 A. I believe that is correct. Again,
4 we don't know exactly what underlies Amazon's
5 sales rankings.

6 BY MS. STEINMAN:

7 Q. Amazon's sales rankings, I assume,
8 reflect books sold on Amazon. Is that your
9 understanding?

10 A. Well, that's my assumption.

11 Q. Fine. So Amazon print sale
12 rankings don't include books sold at big box
13 stores like Costco, correct?

14 A. Again, that's -- yeah, that is my
15 assumption as well.

16 Q. And Amazon print books -- print --
17 Amazon print sale rankings do not include
18 sales from publishers to wholesalers like
19 Baker & Taylor or Ingram, correct?

20 A. Again, that is -- that is my
21 assumption as well.

22 Q. And Amazon's print sales rankings
23 do not include book sales by independent
24 bookstores. Is that your assumption?

25 A. Yes, it is as well.

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1 Exhibit 10?

2 MS. STEINMAN: You know what, I
3 had the wrong one. I'm sorry.

4 Thank you, Joe.

5 BY MS. STEINMAN:

6 Q. In the upper right-hand corner, do
7 you see the date September 2, 2019?

8 A. Yes, I see that, uh-huh.

9 Q. And if you look at the -- in the
10 center of the document -- this is from, you
11 know, Open Libraries, this is from the
12 Internet Archive -- it lists the number of
13 members as of September 2, 2019.

14 Could you read that number into
15 the record?

16 A. Do you mean the total number of
17 members?

18 Q. The total number of members, yes.

19 A. Okay. So the total number of
20 members, if I look at the right row here,
21 it's 2,753,827.

22 Q. And if you would go to the next
23 page.

24 A. Okay.

25 Q. The next page is dated

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1 September 7th, 2020.

2 Do you see that?

3 A. Yes, I do.

4 Q. Could you read into the record the
5 total number of members as of September 7th,
6 2020?

7 A. The total -- sorry. It is now
8 listed as new members rather than -- so,
9 yeah, the row just starts at new members.

10 Q. You're right.

11 A. But the new number of members is
12 3,971,611.

13 Q. Okay. And if you would turn to
14 the next page, please, which is dated
15 September 2, 2021. Could you read the total
16 number of new members as of that date,
17 please?

18 A. September 2nd, 2021, I see the
19 total members as 4,799,436.

20 Q. If you would go to the next page.
21 As of April 25, 2022, how many new members
22 did the Internet Archive Open Library have?

23 MR. GRATZ: Objection, vague.

24 A. On April 25th, 2022, the total
25 number of members was 5,354,735.

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1 BY MS. STEINMAN:

2 Q. So the member -- the number of
3 members of the Internet Archive Open Library
4 has increased from 2.7 million in 2019 to 5.3
5 million currently, correct?

6 MR. GRATZ: Lacks foundation.

7 BY MS. STEINMAN:

8 Q. According to the Internet
9 Archive's website here.

10 A. Yes, according to the Internet
11 Archive's website, the total number of
12 members has increased since September 2019.

13 Q. Okay. And when many of the
14 works-in-suit were first made available on
15 the Internet Archive, are you aware that it
16 had far fewer monthly borrows than in 2020 or
17 currently?

18 A. I haven't previously looked at the
19 number of borrows.

20 Q. Okay.

21 MS. STEINMAN: So let's introduce
22 Exhibit Number 11, please.

23 (Exhibit 11, Open Library is yours, marked
24 for identification.)

25 BY MS. STEINMAN:

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1 Q. Tell me when you have it up.

2 A. Okay. I have it up.

3 Q. Okay. The first page from the
4 Open Library Internet Archive web page --
5 website is dated May 21, 20-- 2011.

6 Do you see that in the upper
7 right-hand corner?

8 A. I do, yes.

9 Q. And in the middle of the page, on
10 the far right, in forest green, do you see
11 the number of e-books borrowed in the last 28
12 days?

13 A. Yes, I do.

14 Q. And could you read that number
15 into the record?

16 A. That number is 4,355 e-books
17 borrowed.

18 Q. Correct. So it's 4,355 e-books
19 borrowed over the last 28 days, correct?

20 A. Yes.

21 Q. Okay. Could you go to the next
22 page, please?

23 A. Yep.

24 Q. This document from the Internet
25 Archive Open Library, is dated May 24, 2013,

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1 correct?

2 A. Yes.

3 Q. And how many e-books were borrowed
4 over the last 28 days, as of that day?

5 A. As of May 24th, 2013, 58,955
6 e-books were borrowed -- were borrowed over
7 the last 28 days.

8 Q. Okay. And if you would turn to
9 the next page.

10 As of May 31st, 2015, what does
11 the Internet Archive website say about how
12 many e-books were borrowed over the prior 28
13 days?

14 A. On that date, that number is
15 95,677.

16 Q. Okay. And if you turn to the next
17 page, dated May 30th, 2017, what does the
18 Internet Archive Open Library's web page
19 indicate are the number of monthly borrows,
20 as of the prior 28 days?

21 A. On that date, the number of
22 e-books borrowed is a hundred and -- sorry --
23 103,637.

24 Q. Okay. And as of May 31, 2020, for
25 the Internet Archive Open Library web page,

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1 how many e-books does it indicate were
2 borrowed over the prior 28 days?

3 A. On that date, the number is
4 470,763.

5 Q. So when the -- many of the
6 works-in-suit were first made available on
7 the Internet Archive, it had far fewer
8 monthly borrows, correct?

9 MR. GRATZ: Objection. Vague in
10 its use of the term "it."

11 BY MS. STEINMAN:

12 Q. Okay. When many of the
13 works-in-suit were first made available on
14 the Internet Archive, the Internet Archive
15 had far fewer monthly borrows, correct?

16 A. In 2011, the total number of
17 borrows across the entire website was much
18 smaller, yes.

19 Q. In fact, it was 4,000,
20 approximately, as compared to 470,000 in May
21 of 2020, correct?

22 A. Yes. Again, across all of the
23 books that were available at the time, yes.

24 Q. And indeed, even in -- as of 2015,
25 it had significantly fewer borrowers -- books

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1 borrowed than the current -- than in 2020,
2 correct? It had 95,000 as opposed to
3 470,000.

4 (Reporter clarification.)

5 BY MS. STEINMAN:

6 Q. 95,000 as opposed to 470,000
7 borrows in the last 28 days.

8 A. Yes. Again, across the entire
9 catalog, the number of borrows has increased,
10 as you said, from about 95,000 to 470,000
11 from 2015 to 2020.

12 MS. STEINMAN: I'd like to
13 introduce Exhibit 13, please.

14 This is actually going to be
15 Exhibit 12. It's Exhibit T8 to
16 Professor Ian Foster's supplemental
17 report, Jesse.

18 (Exhibit 12, Exhibit T8 to Professor Ian
19 Foster's Supplemental Report, marked for
20 identification.)

21 MS. STEINMAN: So we're
22 introducing as Exhibit Number 12 a
23 document which is Exhibit #T8 to
24 Professor Ian Foster's supplemental
25 report.

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1 THE WITNESS: Okay.

2 BY MS. STEINMAN:

3 Q. Since you mentioned that you had
4 not read Professor Foster's supplemental
5 report, I will represent to you that this
6 exhibit indicates the number of additions to
7 the Internet Archive's copies of the work.
8 So, for example, if the Internet Archive
9 owned two copies of a work, and the partner
10 libraries in the Open Libraries program
11 contributed additional copies of the work,
12 that's what is reflected in the last column
13 of this document that says "Additions to
14 maximum eligible concurrent loans." So those
15 are ones contributed by the Open Library.

16 MR. GRATZ: Objection, lacks
17 foundation. I object to counsel's
18 representation regarding anything on
19 this exhibit, in light of Dr. Foster's
20 testimony that it contains errors in the
21 column that was identified by counsel
22 and that that column was calculated
23 incorrectly.

24 MS. STEINMAN: Okay. Then we will
25 proceed based on hypotheticals.

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1 BY MS. STEINMAN:

2 Q. Let us assume, simply for the
3 purposes of this exercise, that these numbers
4 are correct.

5 If the Internet Archive has, for
6 example, 30 copies of a work available for
7 loan currently, that's a different -- it will
8 have a different impact on publishers than if
9 it has, say, one copy available for loan.

10 Would you agree with that?

11 MR. GRATZ: Objection, lacks
12 foundation, calls for speculation,
13 incomplete hypothetical.

14 A. Yeah, I can't say anything about
15 this because I don't know, in the first
16 place, without data whether the -- whether
17 the Internet Archive has an effect at all.

18 Based on my analysis on the Amazon
19 sales rankings, I could not confirm any
20 effect of the Internet Archive, and,
21 therefore, I don't know if one book has an
22 effect or if -- or if 30 books has a larger
23 effect or an effect at all, yeah.

24 BY MS. STEINMAN:

25 Q. Would you agree with me that given

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1 THE REPORTER: I'm sorry, ma'am.

2 Can I ask you to repeat that answer?

3 A. So I looked at -- all of the
4 works-in-suit are works that I looked for on
5 KEEPA, K-E-E-P-A.

6 BY MS. STEINMAN:

7 Q. And were there any works-in-suit
8 that you could not find on KEEPA?

9 A. I state that in my initial report.

10 Q. If I recall, there were only a few
11 you couldn't include.

12 A. That -- that is also my
13 recollection.

14 It is -- in my initial report, in
15 paragraph 39, I state that I found ranking
16 and other information for a total of 1200
17 editions for 118 titles.

18 Q. And do you know what titles were
19 not included?

20 A. No, I don't know that.

21 Q. Okay. With that as a
22 clarification, let me still ask my question.

23 Would you agree with me that given
24 the increase in the number of the Internet
25 Archive's members over the last decade, as

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1 well as an increase in the number of borrows,
2 a steady increase both in the number of
3 members and a steady increase in the number
4 of borrows on the Internet Archive over the
5 last decade, that when you looked at when a
6 works was first made available, that is not a
7 reliable measure of the impact of the
8 Internet Archive in 2020?

9 MR. GRATZ: Objection, vague.

10 A. So the number of members and the
11 number of borrows across the entire website
12 are an incomplete statistic for me to base my
13 number -- base my answer on. It depends on
14 how many people looked at the specific
15 works-in-suit.

16 And, you know -- and, yes,
17 that's -- that's why I'm -- yeah. Actually,
18 strike that. That's my answer.

19 BY MS. STEINMAN:

20 Q. If you had been looking more
21 generally, would you agree with me that the
22 impact of the Internet Archive is likely to
23 vary based on the number of its members and
24 the number of its borrows?

25 MR. GRATZ: Objection, vague,

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1 lacks foundation, calls for
2 speculation.

3 A. Again, especially the number of
4 members doesn't seem like a sufficient
5 statistic for me to look at here. It's -- I
6 would be more interested -- yeah, so -- it
7 depends on the number of -- first, if
8 anything, it depends on the number of
9 visitors specifically to a title; and,
10 second, if I find a null effect for -- in my
11 analysis, there is no reason to believe that
12 there is going to be a positive or negative
13 or a nonzero effect later on without
14 additional analysis.

15 BY MS. STEINMAN:

16 Q. Okay.

17 MS. STEINMAN: Let's introduce,
18 please, Jesse, as Exhibit 13, Exhibit T4
19 from the Foster report.

20 (Exhibit 13, Exhibit T4 to Ian Foster's
21 report, marked for identification.)

22 THE VIDEOGRAPHER: And,
23 Ms. Steinman, just while we're doing
24 that, we're again about 10 minutes away
25 from needing to take a short break to

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1 made available. In fact, I looked at time
2 periods lasting from just 10 days to a full
3 year after the book was made available in
4 Exhibit C. -- after the book was made
5 available at the Internet Archive in my
6 Exhibit C to my original report.

7 Q. Okay. Let's look at paragraph 46
8 of your report.

9 A. Yes.

10 Q. Okay. I'm going to quote it.

11 "To illustrate the statistical
12 significance of the coefficients, I will use
13 a 95 percent confidence level. My
14 coefficient and standard error imply that if
15 one were to estimate this regression a
16 hundred times on a hundred different samples,
17 95 of a hundred coefficients are expected to
18 range between negative 0.0010 (for a rank
19 improvement of 0.10 percent) and plus 0.0057
20 for a worsening of 0.57 percent."

21 Now, again, I'm not an economist,
22 and I want to make sure I understand what
23 that means.

24 Does that mean that you have a 95
25 percent confidence level that in the period

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1 after each of the works-in-suit were made
2 available on the Internet Archive, their
3 print sale rankings on Amazon fell within the
4 range of a .1 percent improvement in sales
5 ranking and a .57 percent sales decline in
6 sales ranking?

7 A. So, again, as a econometrician, I
8 want to be a little careful with the wording.

9 Generally, that is the gist of it.
10 I cannot be -- the idea is that if I were to
11 run this analysis, say, a hundred times on a
12 hundred different samples that look like this
13 one, 95 of those 100 results from those
14 analyses would fall in that range. The
15 others we can think of as outliers.

16 With all of that said, we can say,
17 yeah -- yes, with that said, we can kind of
18 think of this as a, yeah, there's a 95
19 percent confidence that it falls into this
20 range.

21 Q. Phew. I at least got it.

22 Okay. So it's within the range,
23 that after the Internet Archive made a work
24 in suit available, its Amazon sales ranking
25 got worse; in other words, the work in suit

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1 sold less books?

2 A. Yes. It is within this confidence
3 interval I have positive values, which would
4 imply a worsening of rankings, which we would
5 like to translate into fewer books sold.

6 Q. So it's within your 95 percent
7 confidence range that the Internet Archive
8 potentially cannibalized sales of the print
9 versions of the works-in-suit?

10 A. So within my 95 percent confidence
11 interval, I have both values that suggest
12 fewer sales but also values that suggest more
13 sales. I cannot conclude from this, in
14 either direction, whether we have more or
15 fewer sales.

16 Q. Okay. So let's say one of the
17 lesser-known works-in-suit had an Amazon
18 print sale ranking of 10,000.

19 If it declined in sales rankings
20 by .5 percent, which is your lowest number,
21 it would move to a sales ranking of 10,050;
22 is that right? Have I understood that
23 properly?

24 A. If that .5 percent value that you
25 claim -- that you report here were to apply

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1 had this statistically significant positive
2 effect; and, therefore, I wanted to be a
3 little more careful in my interpretation of
4 my -- of these results.

5 Q. Okay. In paragraph 49, which is,
6 again, discussing the results of the removal
7 from the Internet Archive of the
8 works-in-suit, you say -- you review your
9 evidence, and then you say, "Taken at face
10 value, this is at least suggestive evidence
11 that availability of a book at the Internet
12 Archive does not hurt its sales."

13 Why did you stick in the words
14 "taken at face value"?

15 A. Again, any -- any regression we
16 run, any coefficient that we find is unlikely
17 to be the true effect to -- exactly on the
18 point.

19 Now, because each of my
20 coefficients comes with this confidence
21 interval, I want to be a little careful in --
22 in how I interpret and how I report these
23 results.

24 Taken at face value, given the
25 confidence intervals, it seems unlikely that

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1 the availability hurts sales, but I can't
2 rule it out entirely, by the nature of
3 statistics.

4 Q. So your study of the Amazon print
5 sales rankings in your expert reports doesn't
6 definitively prove that the Internet Archive
7 does not cannibalize the plaintiff
8 publishers' print book sales?

9 MR. GRATZ: Objection, vague.

10 A. Any statistical analysis is --
11 statistical analyses aren't set up to
12 definitively prove anything, so -- including
13 this one.

14 BY MS. STEINMAN:

15 Q. And, once again, we discussed this
16 earlier, but your sales of the Amazon print
17 sales rankings don't provide reliable
18 evidence on the subject of whether the
19 Internet Archive cannibalizes the plaintiff
20 publishers' e-book sales?

21 A. That is correct, because the
22 formats are different, and, therefore, one
23 would need an analysis with the right data to
24 do that.

25 Q. Of course.

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1 Okay. Let's move on to a new
2 topic, control factors.

3 A. Okay.

4 Q. #Paragraph 34 of your report says,
5 "Any analysis that tries to quantify the
6 effects of availability at the Internet
7 Archive on sales of a title is complicated by
8 the possibility of concomitant changes in
9 demand for the particular book and for
10 reading in general that are unrelated to the
11 book's availability at the Internet Archive."

12 Would you agree with me that that
13 statement applies to all of your measures,
14 that you have to make sure that the changes
15 that you're looking at weren't caused by
16 something else?

17 A. And by all of my measures, what do
18 you mean with all of my measures?

19 Q. The first one is when the book
20 became available on the Internet Archive, the
21 second is when the NEL started, and the third
22 is when the book came off of the Internet
23 Archive.

24 A. All right. Thank you for
25 clarifying.

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1 I agree that one needs to control
2 for all of -- for these concomitant changes.
3 Although the threat stemming from potential
4 confounding factors varies across these
5 different measures.

6 Q. So there's a big difference
7 between correlation and causation, right?

8 A. That is what much of my field
9 tries to disentangle, yes.

10 Q. Okay. In the first expert report,
11 is it fair to say that you did not control
12 for any other factors, other than
13 seasonality, in connection with your look at
14 the start of the NEL and the removal of the
15 works-in-suit?

16 MR. GRATZ: Objection, vague.

17 A. So in my first analysis, I
18 controlled for the identity of the edition
19 and, hence, the title, as well as the ages of
20 the editions. Beyond that and beyond
21 controls that -- beyond the controls that my
22 analysis of rankings provides inherently, I
23 believe that I had no other control
24 variables.

25 BY MS. STEINMAN:

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1 Q. Okay. Let's -- in your rebuttal
2 report, you focus largely on the addition of
3 the titles -- I'm sorry.

4 In your rebuttal report, you
5 focused largely on theory Number 1, mainly
6 the impact when the Internet Archive first
7 put a book up. And it seems to me you
8 performed the following controls: One,
9 price; two, Amazon star rankings --

10 A. Ah --

11 Q. -- ratings -- Amazon star ratings;
12 three, Amazon reviews, the number of Amazon
13 reviews; four, film and TV adaptations; five,
14 you compared fiction versus nonfiction; and,
15 six, you look at month of the year.

16 Were there any others?

17 A. I'll have to look very briefly --

18 Q. Of course.

19 A. -- if that's all I did.

20 I believe you're correct. I think
21 those are -- those were the controls I added.

22 Q. Excellent. Okay.

23 I'm going to give you a bit of a
24 long list here.

25 Can you confirm that you did not

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1 run controls for theory Number 1 -- again,
2 which is when the work was first put up on
3 Internet Archive -- that you did not run
4 controls for the following: One, any title
5 marketing efforts by the author and
6 publisher?

7 A. Could you give me an example of a
8 title marketing effort?

9 Q. Sure.

10 An advertising campaign or a
11 social media campaign or a sweepstake.

12 A. Okay. Thank you.

13 That is correct, I did not control
14 for those.

15 Q. And is it correct that you did not
16 control for any press, mainstream press?

17 A. That is correct.

18 Q. And is it correct that you did not
19 control for any author appearances?

20 A. That is correct as well.

21 Q. And is it correct that you did not
22 control for any retail marketing or placement
23 changes; in other words, putting a book in
24 the front of the bookstore?

25 A. That is correct.

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1 Q. And is it correct that you did not
2 control for publication of other books by the
3 author entering the market?

4 A. That is also correct.

5 Q. And is it correct that you did not
6 control for any awards for the title or
7 author?

8 A. That is also correct.

9 Q. And is it correct you did not
10 control for any social media regarding the
11 title?

12 A. That is also correct.

13 Q. And is it correct that you did not
14 control for Google trends -- or let me
15 rephrase that.

16 Is it correct that you did not
17 look at Google trends, as you had done in
18 your other two articles?

19 A. That is also correct.

20 Q. And is it correct that you did not
21 control for any instances in which there had
22 been what's called a community read or a
23 whole university had read a book or other
24 similar reasons for large bulk purposes?

25 A. That is also correct.

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1 Q. Is it correct that you did not
2 control for any new book covers; in other
3 words, if the publisher had decided to put a
4 new cover on a book in an attempt to increase
5 sales?

6 A. I'm not sure that happens for the
7 same edition or if that would become a new
8 edition.

9 Q. I will represent to you that
10 sometimes there's a change in a book cover
11 without it making a new edition.

12 If that's the case --

13 A. I did not control for that.

14 Q. Perfect.

15 Did you control for title-related
16 fluctuations in demand, for other reasons?

17 A. So some of my analyses and some of
18 my control variables and subsample analyses
19 got potential title-level fluctuations in
20 demand.

21 Q. And that was the number of Amazon
22 star ratings and reviews, correct?

23 A. The number of Amazon reviews
24 mostly, yes. And also analyses where, for
25 example, I dropped the nonfiction titles,

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1 which might have been more likely to
2 experience these fluctuations in demand,
3 especially for these works that had been
4 out -- had been originally published a few
5 years ago.

6 Q. And did you do any other controls
7 for title-related fluctuations in demand?

8 A. Beyond the general controls that
9 we've mentioned and the function of time
10 since the edition's release, I did not
11 control for title fluctuations in demand.

12 Q. Okay. And did you control for any
13 age-related fluctuations in demand?

14 A. So I have the edition age and the
15 edition age squared in my analysis.

16 Q. Okay. Let's turn to some of your
17 other focuses.

18 You looked at under number --
19 theory number 2 and theory number 3, you
20 looked at the impact of a work -- the impact
21 of the start of the National Emergency
22 Library and the impact of the works being
23 removed from the Internet Archive in and
24 around June 2020.

25 A. Around that date, given --

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1 (Reporter clarification.)

2 A. Oh, I said around that date. And
3 Exhibit 9 tells you the exact date of when a
4 title was removed.

5 BY MS. STEINMAN:

6 Q. Most of those were in June 2020,
7 correct?

8 A. Most but not all of them, yes.

9 Q. Okay. Let's talk about COVID.
10 You state, in paragraph 35, the
11 COVID-19 pandemic was, quote, "an
12 unprecedented shock to the market for books,"
13 correct?

14 A. Sorry. You're in my initial
15 report again; is that --

16 Q. Yes. I'm sorry to bounce around.
17 Yes, paragraph 35 of your initial report.

18 A. In paragraph 35. No.

19 Q. Maybe I'm wrong. Do I have the
20 wrong one?

21 A. That is where I refer -- I thought
22 you were quoting me, but you weren't, right?

23 Okay. I apologize. Yes, you're
24 correct.

25 Q. Not always.

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1 Isn't it true that the pandemic
2 had very complex impacts on the book
3 publishing industry that varied over time and
4 that would have affected different titles
5 differently?

6 MR. GRATZ: Lacks foundation.

7 A. So the -- the pandemic had -- most
8 likely had a large impact on the book
9 publishing industry as a whole. I am not
10 sure how the pandemic itself had different
11 impacts on different titles at different
12 times.

13 BY MS. STEINMAN:

14 Q. Let's say, for example, that --
15 let me strike that. I'll -- strike that.
16 Let me ask this question: In either your
17 first report or your rebuttal report, when
18 you were looking at the impact of the start
19 of the NEL and you were looking at the
20 removal of the works-in-suit from Internet
21 Archive, you did not control for the complex
22 impact of COVID on different titles, did you?

23 MR. GRATZ: Lacks foundation.

24 Lacks foundation.

25 BY MS. STEINMAN:

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1 Q. Go ahead.

2 A. So I controlled for it in indirect
3 ways.

4 Q. Other than looking at the
5 distinction between fiction and nonfiction,
6 did you control for the impact of COVID on
7 your measures 2 and 3, namely, when the NEL
8 started and when the works-in-suit were
9 removed from the Internet Archive?

10 A. So let me just clarify that. By
11 looking at rankings, I have taken out -- I
12 have controlled for the overall effect on the
13 industry, right? I'm comparing relative
14 sales and not overall changes in sales.

15 Beyond that and beyond removing
16 the nonfiction titles in a separate analysis,
17 the only control that might capture or that
18 could capture potential differences in these
19 effects of the pandemic, the only controls
20 that could capture those, if they exist, are
21 captured in prices and ratings and the number
22 of reviews.

23 Q. So is it fair to say that,
24 assuming that COVID impacted different books
25 differently, including within their

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1 respective genres, that you would not be
2 picking that up in your analyses?

3 A. So under the assumption that -- or
4 if this were the case, that some -- that the
5 books, especially in the works-in-suit, were
6 affected differently from other books that
7 had similar demands, that is not explicitly
8 captured beyond the measures that I've
9 mentioned.

10 Q. Okay. Let's look at some of the
11 reasons, COVID-related, impacts-related,
12 raised by Dr. Prince.

13 Let's assume that some of --
14 several of the works-in-suit are the types of
15 books assigned in high school and middle
16 school to students, works like The Catcher in
17 the Rye and Nine Stories by Salinger. And
18 let's assume, when schools closed, those
19 books got stuck at school and kids did not
20 have access to them. And let's assume that
21 their parents bought replacement copies so
22 their kids could read the books assigned in
23 schools. And school, as we all know, ends in
24 the United States in and around May or June,
25 and kids then have a summer vacation.

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1 Isn't it plausible that for those
2 types of titles that are assigned in schools,
3 that their sales would have declined in the
4 summer of 2020 because of this COVID impact?

5 MR. GRATZ: Lacks foundation,
6 incomplete hypothetical.

7 A. So under the assumption that the
8 works-in-suit are disproportionately books
9 that are read in school, and that the
10 students were not able to recover the books
11 from school, and parents then went on Amazon
12 to buy these books, under those three
13 assumptions, one would expect for those
14 titles that were read -- that were read in
15 school, the -- one would expect demand to
16 increase because of COVID.

17 BY MS. STEINMAN:

18 Q. So it would increase in the spring
19 of 2020 and then decline in the summer of
20 2020, under this hypothetical?

21 A. So this is clearly a hypothetical.

22 Q. It is.

23 A. But also it's unclear to me why
24 people would continue buying books -- buying
25 these books in May and not just have them --

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1 have bought them in March.

2 Q. Was school still in session in May
3 in most places in the United States?

4 A. So the answer to that is probably
5 yes. Although -- but the question that I --
6 the part of this that I'm tripping over or
7 that I'm -- yeah, that I'm tripped up over, I
8 think I said, is why people still buy books
9 in late May for a -- for a semester that's
10 about to end and a book that is something
11 like The Catcher in the Rye.

12 Q. Okay. Have you read the press
13 articles cited in Professor Prince's report
14 showing that during COVID there were -- there
15 was a shift in the types of books and the
16 genre of books that were very popular?

17 A. I have not read those articles.

18 Q. Do you have any reason to doubt
19 that those shifts occurred?

20 A. I'd be happy to read the articles
21 now. I'm not sure what titles these articles
22 are referring to.

23 Q. But, as you sit here today -- and
24 you did read Professor Prince's report, even
25 if not the articles -- do you have any basis

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1 at this point to contest his presentation
2 that during COVID there was a shift in the
3 types of books and the genre of books that
4 people were buying?

5 MR. GRATZ: Lacks foundation,
6 calls for speculation.

7 A. Exactly. So the thing that I'm --
8 I'm not -- sorry. Let me try that again.

9 This is one of those things where
10 I, as a researcher, I would like to see the
11 data. I can't just wholeheartedly confirm
12 this; I can't deny it either. I would like
13 to look at the data and see how demand
14 overall shifted for different genres or
15 different types of books.

16 BY MS. STEINMAN:

17 Q. I can certainly understand that.

18 And my only question is, you know,
19 as you sit here today, and I realize you
20 haven't looked at the data, but as you sit
21 here today, do you have any information that
22 would contradict, you know, Professor
23 Prince's presentation that there was a shift
24 in the various types of books and genres in
25 terms of popularity during the COVID time

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1 period?

2 MR. GRATZ: Vague, lacks
3 foundation, calls for speculation.

4 A. I mean, I can neither contradict
5 him nor can I agree with him.

6 BY MS. STEINMAN:

7 Q. Perfect. That's all I'm asking.

8 A. Okay.

9 Q. Assuming that the article cited by
10 Professor Prince was correct, that historical
11 fiction books became increasingly popular in
12 June 2020, that would have decreased the
13 Amazon print sale rankings of the
14 works-in-suit, which I will represent to you
15 do not include many works of historical
16 fiction, correct?

17 MR. GRATZ: Lacks foundation,
18 vague.

19 A. So with decreased rankings, you
20 meant made the rankings worse?

21 Q. Yes, I'm sorry. Let me say -- let
22 me repeat the question. You're absolutely
23 right. It's so hard with these Amazon
24 rankings.

25 If, for example, historical

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1 fiction books became increasingly popular in
2 June 2020, the Amazon print rankings of the
3 works-in-suit would have gone up, meaning
4 that sales went down, correct?

5 MR. GRATZ: Lacks foundation,
6 calls for speculation.

7 A. And as you said previously,
8 because the works-in-suit do not include
9 historical fiction.

10 BY MS. STEINMAN:

11 Q. Correct. Right. We're going to
12 assume that for this question.

13 A. So assuming that, this is still
14 not a given, because each book competes
15 against different books, essentially with
16 relatively similar sales. For those books in
17 the works-in-suit that are not near
18 historical fiction books, it's -- the mere --
19 you know, let's call it fact here, but this
20 assertion that historical fiction demand
21 increased would not have affected the Amazon
22 rankings of books that weren't competing with
23 those historical fiction books.

24 Q. Could you explain that further?
25 Are you saying that the Amazon sales rankings

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1 are grouped by genre?

2 A. They're not grouped by genre.
3 They're grouped by sales. But if no
4 historical fiction book has similar sales
5 numbers as a work-in-suit, then that book
6 increasing its sales may not have an effect
7 on the ranking of the work-in-suit.

8 Q. Okay. So I still am lost.

9 Does Amazon throw everything into
10 one pot and just list from top to bottom all
11 of the books in terms of their sales ranking?

12 A. So to the extent that we've talked
13 about Amazon sales rankings and to the extent
14 that I know how Amazon sales rankings work, I
15 understand Amazon sales ranking to be based
16 on the sales in recent time periods, and all
17 editions or all book editions that are
18 physical are subject to the same rankings; so
19 yes, all books are in the same ranking group,
20 so to speak.

21 Q. Okay. So let's -- frankly, let's
22 do it, I think it would be easier with the
23 Black Lives Matter book -- books.

24 A. Sure.

25 Q. Let's say hypothetically George

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1 Floyd is killed, he's murdered, the Black
2 Lives Matter movement explodes; and,
3 hypothetically, let's say 100 books that, in
4 one way or another, pertain to race suddenly
5 become the top 100 best-selling books in the
6 Amazon print rankings.

7 Isn't that going to push down the
8 Amazon print sales ranking of a book about
9 yoga?

10 MR. GRATZ: Objection. Calls for
11 speculation. Vague, lacks foundation,
12 incomplete hypothetical. You can
13 answer.

14 A. So under this assumption that
15 there is an event in 2020 that would lead 100
16 books about racial justice moving to spots 1
17 to 100, in the Amazon sales rankings, then
18 each of the -- each of the remaining books
19 would lose -- would have a worsening of its
20 ranking by the number of books that were
21 previously listed behind -- behind that
22 specific book that were -- that then moved
23 into the top 100.

24 Q. So when a topic becomes of
25 significant interest, it can impact the

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1 Amazon sales rankings of books?

2 MR. GRATZ: Lacks foundation,
3 calls for speculation, incomplete
4 hypothetical.

5 You can answer. Sorry.

6 A. Which books are you referring to
7 here, the Amazon sales rankings of books?

8 BY MS. STEINMAN:

9 Q. I'll start again.

10 If a given genre or topic becomes
11 of much greater interest than it was
12 previously, in June 2020, that can have an
13 impact on the rankings -- the Amazon print
14 sales rankings of books that are not in the
15 hot category or genre? The nonhot books will
16 have a higher Amazon sales ranking, meaning a
17 worsening of sales?

18 A. If such an event -- yes, if such
19 an event happens that makes books of one
20 particular subject matter very popular, the
21 increases of sales of those books would lower
22 or worsen the ranking of other books.

23 Q. In the Amazon print ranking?

24 A. Yes.

25 Q. Okay. In your rebuttal report,

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1 paragraph 5 -- I'm sorry, let me start
2 earlier.

3 We have established, have we not,
4 that other than for distinguishing between
5 fiction and nonfiction, you did not otherwise
6 control for the impact of COVID, for the
7 reasons you have explained, right?

8 A. Beyond that distinction of fiction
9 and nonfiction and the other control
10 variables that help control for
11 title-specific fluctuations, I did not
12 control for COVID.

13 Q. Okay. And in paragraph 5 of your
14 rebuttal report, you state, quote, "Concerns
15 about changing interest in topic seem most
16 salient for nonfiction books: Beyond TV and
17 movie adaptations or idiosyncratic reasons
18 for notoriety of a particular book, such as
19 some news event relating to the book's
20 author, the interest in fiction books is
21 unlikely to see large shocks several years
22 after their original publication, whereas
23 nonfiction books may discuss certain topics
24 for which interest rises for other reasons."

25 And my question for you is, do you

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1 have any evidence for this conclusion?

2 A. And "by this conclusion," you mean
3 the difference --

4 Q. The conclusion that non -- that
5 fiction books are unlikely to see large
6 shocks several years after their original
7 publication?

8 MR. GRATZ: Objection. Misstates
9 the content of the document.

10 A. I don't have any data evidence on
11 this.

12 BY MS. STEINMAN:

13 Q. Do you think that -- do you have
14 any friends who read fictional works about
15 plagues and viruses during COVID?

16 A. Do I have friends? No.

17 MR. GRATZ: Objection. It assumes
18 facts.

19 BY MS. STEINMAN:

20 Q. Would it surprise you to learn
21 that historical fiction became very popular
22 during COVID as reported in the article cited
23 in Dr. Prince's report?

24 A. I mean, increases in demand or in
25 interest for viruses would not surprise me

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1 when COVID happened.

2 Q. Okay. Let's talk about supply
3 chain issues. There were supply chain issues
4 of all of sorts during COVID? Yes?

5 A. I'm not quite sure when the supply
6 chain issues really became significant.

7 Q. Okay. Did you -- did you look
8 into whether the publishers experienced
9 worker shortages in their warehouses in the
10 summer of 2020?

11 A. No, I did not look into that.

12 Q. Did you look into whether the
13 publishers experienced trucking shortages in
14 the spring and summer of 2020?

15 A. I did not look into that either.

16 Q. Did you look into whether the
17 publishers had difficulties getting their
18 print books reprinted when stock on a
19 particular title ran low in the spring or
20 summer of 2020?

21 A. No, I did not look into that
22 either.

23 Q. Now, supply chain issues can
24 impact different books differently. For
25 example, let's say book A, the publisher had

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1 a lot of stock, and book B, the publisher ran
2 out of stock during the spring or summer of
3 2020.

4 Would you agree with me that
5 supply chain issues can affect different
6 titles differently?

7 A. They can affect different titles
8 differently.

9 Q. Okay. Let move to Black Lives
10 Matter. I know that you looked, at certain
11 points in time, at the USA Today best seller
12 lists.

13 Are you aware that the best seller
14 list -- USA Today best seller list became
15 studded with books addressing Black Lives
16 Matter topics in the summer of 2020?

17 A. I believe Dr. Prince mentioned
18 that in his report. Is that correct?

19 Q. That is correct.

20 A. So based on that, I have no reason
21 not to believe him.

22 Q. And did your study examine the
23 impact of Black Lives Matter on the Amazon
24 print rank -- print sales rankings in the
25 summer of 2020?

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1 A. Again, beyond the analysis in
2 which I had dropped the nonfiction books, I
3 did not specifically look at the Black Lives
4 Matter.

5 Q. Would you agree with me that the
6 presence of many best-selling books on Black
7 Lives Matter issue or racial justice issues
8 or, frankly, race issues more generally, in
9 the summer of 2020, would be a potentially
10 plausible explanation for the 1 to 2 percent
11 decline in Amazon print sale rankings for the
12 works-in-suit in the summer of 2020?

13 MR. GRATZ: Lacks foundation.

14 A. I just want to look briefly at my
15 rebuttal report for that.

16 BY MS. STEINMAN:

17 Q. Take your time.

18 A. So this would -- any increase in
19 social justice books that -- or in demand for
20 social -- sorry, let me do this again.

21 I'm sorry. I'm thinking through
22 an analysis right now. That's what's causing
23 a bit of a delay.

24 So -- well -- sorry, there it is.
25 Okay. The other analysis.

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1 A 1 to 2 percent decrease in
2 rankings would have to -- for a 1 to 2
3 percent decrease in ranking to be explained
4 by an increase in demand for social justice
5 books, that would require a lot of social
6 justice books displacing the works-in-suit
7 and the works-in-suit not also getting any
8 bump in demand at the same time.

9 Q. Okay.

10 MS. STEINMAN: Let's introduce
11 Exhibit 14 -- is that the right
12 number? -- which are 2020 USA Today
13 best-selling lists from May, June and
14 July.

15 (Exhibit 14, Best selling books list: USA
16 Today's Top 150 Weekly best sellers, marked
17 for identification.)

18 THE WITNESS: Okay. Okay.

19 BY MS. STEINMAN:

20 Q. Why don't I give you just a few
21 minutes look to through these 14 pages, which
22 are the USA Today top 50 -- top 150 weekly
23 best sellers for a couple of months in the
24 summer of 2020.

25 A. Okay. Yep. Thank you.

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1 Q. Would it be fair to say that these
2 USA Today top 150 best seller lists for May,
3 June, and July showed that book purchasers
4 had a very significantly enhanced interest in
5 race?

6 MR. GRATZ: Lacks foundation,
7 vague, calls for speculation.

8 A. So one thing is I only see the
9 top 20, not the top 150.

10 Q. Yes --

11 A. There's only a few books here. I
12 don't know how many more books about race
13 might have shown up at all. I don't know
14 that. I mean, I do see a couple of books
15 that showed up in June that did not show up
16 earlier, yes, about race, yeah.

17 Q. And in June, July -- in June,
18 July -- June and July, there are a
19 significant number of books in the top 20
20 that are books about race, aren't there?

21 MR. GRATZ: The document speaks
22 for itself, lacks foundation.

23 BY MS. STEINMAN:

24 Q. Let's look, for example, at --
25 let's see, what page is this? -- the week of

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1 June 12.

2 A. June 12th.

3 MR. GRATZ: What page of the
4 exhibit are we looking at?

5 MR. FEITEL: It's page 13 of the
6 PDF.

7 MR. GRATZ: Great. Thank you.

8 THE WITNESS: Thank you.

9 Okay.

10 BY MS. STEINMAN:

11 Q. The number 1 book White Fragility:
12 Why It's So Hard for White People to Talk
13 about Racism. Now that's a book about racial
14 justice, yes?

15 A. It most likely is, yes.

16 Q. Okay. And the third book on the
17 list, How to Be an Antiracist, by Ibram
18 Kendi, that's a book focused on race,
19 correct?

20 A. It seems that way, yes.

21 Q. And the fourth book, So You Want
22 to Talk About Race, and that's a book about
23 race and racism, yes?

24 A. Yes.

25 Q. The fifth book on the list is Me

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1 and White Supremacy, Combat Racism, Change
2 the World, and Become a Good Ancestor.

3 Would you agree with me that
4 that's a book about race?

5 A. I would agree with you, yes.

6 Q. And the book that's seventh on the
7 list, Where The Crawdaddy [sic] Sings is a
8 fiction book about an African American
9 family, yes?

10 MR. GRATZ: Lacks foundation.

11 A. I haven't read this book, although
12 it's been a best seller for a long time
13 before that as well. Yeah. I've missed my
14 chance. Or I still have a chance to read it.
15 I haven't yet.

16 Q. Okay. The eighth book, Between
17 the World and Me, by Ta-Nehisi Coates, the
18 author writes of the nation's history and
19 racial crisis in the form of a letter to his
20 son. And that's a book about race, isn't it?

21 A. It seems like it, yes.

22 Q. Book number 13, The New Jim Crow,
23 by Michelle Alexander, Mass Incarceration in
24 the Age of Colorblindness. I read that book.
25 I can tell you that it's all about the unfair

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1 disproportionate incarceration of the black
2 community.

3 That's a book about race, isn't
4 it?

5 A. Yes.

6 Q. The Color of Law, number 16 on the
7 list, A Forgotten History of How Our
8 Government Segregated America.

9 Is that a book about race?

10 A. Yes.

11 Q. The World Needs More Purple
12 People, it's a children's book with the
13 theme -- I appreciate it's geared toward
14 children, but would you agree with me that's
15 a book that's trying to encourage children to
16 not be -- not view people by their color?

17 MR. GRATZ: Lacks foundation.

18 A. I haven't read it, but it's about
19 including others.

20 BY MS. STEINMAN:

21 Q. Okay. Do you think it would be
22 fair to say that in -- during the week of
23 June 12, 2020, that the best seller -- the
24 top 20 of the best seller list was dominated
25 by books about race?

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1 MR. GRATZ: Lacks foundation.

2 A. I think you listed nine books off
3 the top 20 that had to do with racism.

4 BY MS. STEINMAN:

5 Q. And that's pretty substantial
6 given --

7 MR. GRATZ: Lacks -- lacks
8 foundation.

9 A. Yeah. Whatever substantial means.

10 BY MS. STEINMAN:

11 Q. Would you agree with me that
12 suddenly, at this time period, race became a
13 topic of great interest to the American
14 reading public?

15 A. So -- I mean, based on these data,
16 which are limited to the top 20, you know,
17 there was an increase in reading interest in
18 the top 20 for the -- for the topic of racial
19 justice from, say, May to June in 2020. I
20 don't know what happened in 2019 or
21 something.

22 Q. Right. And you did not control
23 for that in your report?

24 A. Not beyond the measures that I've
25 mentioned.

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1 Q. You also had presidential
2 primaries and the presidential election of
3 Donald Trump and Joe Biden in the fall of
4 2020. It was a big year.

5 Did you control -- would you agree
6 that those issues garnered tremendous
7 attention in this country?

8 A. Yes, I agree that -- yes, people
9 in this country were quite interested in the
10 outcome of that election.

11 Q. And did you control for the impact
12 of those events on the Amazon print sale
13 rankings of the works-in-suit?

14 MR. GRATZ: Lacks foundation
15 and -- well, lacks foundation with
16 respect to what books were included in
17 the analysis.

18 BY MS. STEINMAN:

19 Q. Let me clarify that my question is
20 confined to the works-in-suit.

21 When you ran your analyses of the
22 impact of the Internet Archive on the
23 works-in-suit, did you control for the
24 presidential primaries and election?

25 A. So I'm hesitant to answer this

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1 control -- sorry, in interest from one day to
2 another.

3 Q. Okay. You wrote an article on --
4 with Joel Waldfogel titled Digitization and
5 Prepurchase Information: The Causal and
6 Welfare Impacts of Reviews and Crowd Ratings
7 in the American Economic Review, correct?

8 A. Yes, I believe that was the title,
9 yes.

10 Q. Okay. In this article you
11 concluded that Amazon's star ratings impacted
12 book sales, correct, those are consumer
13 stars?

14 A. That is correct, those are the
15 stars from, say, 1 to 5.

16 Q. And just putting that in a broader
17 category, consumer Amazon star ratings are --
18 in essence, they fall in the larger category
19 of good publicity for a book?

20 MR. GRATZ: Objection, lacks
21 foundation.

22 A. This is what Dr. Prince called it
23 as well.

24 BY MS. STEINMAN:

25 Q. Yes, and would you agree; is that

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1 fair?

2 MR. GRATZ: It lacks foundation.

3 A. I'm not sure how it really is
4 publicity, but -- yeah, but the word itself
5 doesn't bother me, exactly.

6 BY MS. STEINMAN:

7 Q. Okay. In your expert report, you
8 did not control for either good publicity or
9 bad publicity of any sort for the
10 works-in-suit, correct?

11 MR. GRATZ: Objection. Vague in
12 its use of the term "good publicity," or
13 bad publicity."

14 BY MS. STEINMAN:

15 Q. We'll call it favorable publicity
16 or critical publicity.

17 MR. GRATZ: Same objection.

18 BY MS. STEINMAN:

19 Q. Okay. I'll rephrase.

20 In your expert reports, you did
21 not control for a press that positively
22 reflected on a book or author or press that
23 negatively criticized a book or author,
24 correct?

25 A. So this seems like one thing that

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1 you mentioned previously about mainstream
2 press, for example.

3 It is correct that I did not
4 control for these. I did not expect that to
5 be a big factor for titles that have been
6 around for a while.

7 Q. And have you done any research
8 into whether publishers engage in publicity
9 that impacts book sales?

10 A. I don't currently remember that --
11 whether -- if I've done that. I don't
12 remember that.

13 Q. Would it be surprising to you to
14 learn that if publishers engage in publicity
15 efforts and marketing efforts for a book,
16 that they often lead to increased sales of a
17 title?

18 MR. GRATZ: Objection, compound.

19 A. This is, again, something that --
20 I would like to do the analysis to see if
21 it -- if it affects sales. Given that, that
22 I haven't done the analysis and I would like
23 to do it, it wouldn't exactly surprise me if
24 it did.

25 BY MS. STEINMAN:

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1 Q. Okay. I had earlier asked you
2 about whether you ran this -- never mind.
3 Strike that.

4 MS. STEINMAN: You know what?
5 Let's take a five-minute break.

6 MR. GRATZ: All right.

7 THE WITNESS: Okay. Sounds
8 good.

9 THE VIDEOGRAPHER: Going off the
10 record. The time is 4:32 p.m. This is
11 the end of Media Unit 4.

12 (Recess taken at 4:32 p.m. to 4:43 p.m.)

13 THE VIDEOGRAPHER: We're back on
14 the record. The time is 4:43 p.m. This
15 is the beginning of Media Unit 5.

16 (Reimers5 audio)

17 BY MS. STEINMAN:

18 Q. Earlier in our conversation, I had
19 reviewed a long list of potential controls.
20 We had discussed them in relation to your
21 first area of inquiry, namely, what happened
22 when Internet Archive first put the books,
23 the works-in-suit on the Internet Archive.

24 Now I'm going to focus on the
25 second two measures, namely, the beginning of

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1 the National Emergency Library, and number 3,
2 the removal of the books from the Internet
3 Archive.

4 Would you confirm that you did not
5 run the following controls for your analyses
6 looking at the effect of the start of the
7 National Emergency Library and the removal of
8 the works-in-suit from Internet Archive on
9 the Amazon print sales rankings for the
10 works-in-suit?

11 You did not control for the topic
12 of the work-in-suit, correct?

13 A. I did not control for the topic
14 beyond the general control for the title.

15 Q. And what do you mean by the
16 "general control for the title"?

17 A. The editions overall demand
18 that -- that we talked about this variable
19 that allows demand for one edition to be
20 higher than demand for another edition, where
21 each edition gets its own variable, and
22 therefore, its own baseline level of
23 popularity, which editions fully encompass
24 topics.

25 Q. So that's controlling for the

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1 edition of a given title. In other words, if
2 one -- yeah, if The Catcher in the Rye was
3 released in 12 different editions of mass
4 market and -- that's what you're talking
5 about, correct?

6 A. Yes, so each edition of those gets
7 its own popularity baseline.

8 Q. Okay. But other than for breaking
9 it out by edition as opposed to title, did
10 you control for the topic of the
11 work-in-suit?

12 A. So these variables fully control
13 for general differences in topic, but --
14 yeah, like they control for general
15 differences in topics, right. If we have a
16 different baseline for, you know, The Catcher
17 in the Rye than for Lion, the Witch and the
18 Wardrobe or, you know, advanced Religion for
19 Dummies, or something, and then, you know,
20 these variables that I include control for
21 the differences in these -- in these topics.

22 Q. In other words, you're looking at
23 each individual work-in-suit individually?

24 A. I'm not sure what that means.

25 In the regression, I use all

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1 editions together, but I allow each edition
2 to be different from other editions.

3 Q. Okay. In other words, you're
4 running your analysis based on each edition
5 of the work, the mass market edition or the
6 paperback edition with one cover and the
7 paperback edition with a different cover?

8 A. Yes, as I state in paragraph 39 of
9 my initial report, yes, I use a total of
10 1,260 editions. They all are entered into
11 this analysis.

12 Q. Okay. But you haven't -- I
13 appreciate that the books relate to different
14 topics. But, other than that, you haven't
15 controlled for the impact of an increased
16 interest in some particular new topic?

17 A. That is correct, yes.

18 Q. Okay. And you have not
19 controlled -- again, looking at your analysis
20 of the impact of the Internet Archive during
21 the start of the National Emergency Library
22 or the removal of the works-in-suit from the
23 Amazon print sales rankings, you did not look
24 at the -- focus on whether the publishers had
25 ended any title marketing efforts, correct?

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1 A. That is correct.

2 Q. And you did not look at any time
3 lapses from public mentions, including press?

4 A. That is correct.

5 Q. And you did not look at any time
6 lapses from author appearances?

7 A. That is correct as well.

8 Q. And you did not look at the end of
9 any retailer marketing or placement changes,
10 correct?

11 A. That is correct, yeah.

12 Q. And you did not look at the end of
13 a boost from an earlier award or title for a
14 book or author?

15 A. No, I did not.

16 Q. And you did not look at the end of
17 any social media impacts?

18 A. Correct.

19 Q. And you didn't look at any decline
20 of a book from a TV show or adaptation,
21 correct?

22 A. That is correct.

23 Q. Okay. And you did not look at
24 Google Trends?

25 A. That is correct as well.

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1 Q. And other than for the topics
2 you -- the controls you've identified, you
3 didn't look at other title-related
4 fluctuations in demand?

5 A. That is correct.

6 Q. Is it plausible that there were
7 other -- is it plausible that there were
8 other impacts, other than the Internet
9 Archive, on the works-in-suit that would have
10 impacted their Amazon print sales rankings in
11 the spring and summer of 2020?

12 A. So we discussed the possibility
13 of, say, racial justice -- changes in
14 interest of racial justice, et cetera. These
15 possibilities apply. It's not clear whether
16 these -- you know, whether these
17 possibilities change the rankings of the
18 works-in-suit differently from the -- you
19 know, from other books that are not in my
20 analysis.

21 Q. Okay. In your rebuttal report at
22 paragraph 7 -- I'll let you get there. You
23 state, quote, "I agree with Dr. Prince that
24 for my analysis to cover causal relationship,
25 I have to ensure that the decision to make a

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1 I don't know exactly which titles -- the
2 editions come from that -- inform these
3 numbers.

4 Now, what I did to come up with
5 the 45 percent number, is I took these years
6 5 through 11 and took the average annual
7 sales of years 5 through 11, and I assumed
8 that these average annual sales in years 5
9 through 11 continued to be the same number up
10 until year 50.

11 So what I did there is I assumed
12 that these books -- I assumed that all of
13 these books are evergreens, in the sense that
14 their demand remains constant starting in
15 year -- you know, just after the first five
16 years. That is if all books are evergreens.

17 Q. Okay. I follow you.

18 A. Moving this to the title level
19 would not -- would not decrease my 45 percent
20 level. In fact, if I had the data, I would
21 be quite confident that the first five -- the
22 five-year share is larger than 45 percent.

23 Q. Okay. Let's look at your decision
24 to focus on editions.

25 Isn't it true that editions often

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1 get replaced or sidelined even though revenue
2 for an overall title remains very strong?

3 A. I don't know how often editions
4 get moved out of the -- out of the market.

5 Q. Okay. Are you aware that it's
6 customary for trade book publishers to
7 release a paperback edition one year after
8 the hard cover publication?

9 A. I'm aware that there's a lag, yes,
10 for the paperback, uh-huh.

11 Q. And when, a year after the book's
12 initial publication, the trade paperback
13 comes back -- comes out, that usually
14 significantly reduces the sales of the hard
15 cover but not the title as a whole.

16 Are you aware of that?

17 A. I'm not sure I've seen studies
18 about the effect of, you know, paperback
19 release on hard cover editions. But, in
20 general, you know, the effect of one edition
21 on the other is going to be different from
22 the effect of adding an edition to be some of
23 demands from the two editions.

24 Q. Do you know of anything to
25 contradict the notion that when a trade

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1 paperback comes out a year after initial
2 publication, that that generally reduces the
3 sales of the hard cover but not the title as
4 whole?

5 A. I don't have any data to predict
6 or confirm that.

7 Q. Okay.

8 A. Or I haven't looked at data --
9 (Reporter clarification.)

10 THE WITNESS: Or I haven't looked
11 at data that would allow me to confirm
12 or -- yeah.

13 BY MS. STEINMAN:

14 Q. Let's say -- I'm sorry. Confirm
15 or -- go ahead.

16 A. Yeah, I forgot what I said.
17 Confirm or deny that statement or disagree.

18 Q. Let's say a publisher decides to
19 put a new introduction into a book, say, Lord
20 of the Flies; and isn't it true that they
21 will come out with the new edition and the
22 sales of the prior edition will plummet, even
23 though the demand for the book remains either
24 at the same level or higher?

25 A. I have no data to tell me that the

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1 sales would, as you say, plummet or change in
2 any way for the -- I haven't looked at data
3 that would tell me how the sales for the
4 previous edition change.

5 Q. Okay. Let's -- let me give you a
6 hypothetical, then.

7 Let's assume that when the
8 publisher decides to come out with a new
9 trade paperback edition of a book, for
10 example, Lord of the Flies, they stop
11 distributing the older one with the ugly
12 cover, and they only distribute the copy with
13 the new beautiful cover.

14 Wouldn't you agree with me that
15 that renders it -- that renders your review
16 of editions unreliable? You're not looking
17 at the total demand for the title; you're
18 looking for the demand for the edition, which
19 has effectively been put out of print by the
20 publisher so that they -- so that they're
21 distributing the one with the new beautiful
22 cover?

23 A. So in your hypothetical scenario,
24 where the initial edition is taken out of
25 distribution altogether, if that is the case,

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1 then looking at that initial edition and
2 sales for that initial edition does not
3 accurately describe the demand for the title.

4 Q. Okay. And going back to the
5 issuance of the trade paperback when -- a
6 year after the hard cover.

7 If I am correct that the
8 introduction of a cheaper trade paperback
9 reduces the sale of the more expensive hard
10 cover but not the overall revenue for the
11 title, that would also skew your analysis,
12 correct?

13 MR. GRATZ: Objection, vague.

14 A. That depends on how the
15 paperback -- on whether the paperback edition
16 changes -- or the introduction of the
17 paperback edition changes the sales of the
18 hard cover edition.

19 BY MS. STEINMAN:

20 Q. Yes.

21 So let's assume, in our
22 hypothetical, that it does. Let's assume
23 that when a more reasonably priced trade
24 paperback comes out a year after initial
25 publication, that the hard cover sales, which

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1 are more expensive, go down, but that the
2 overall revenue for the title remains stable
3 or goes up.

4 If that is the case, doesn't that
5 skew your analysis here, which is based on
6 editions rather than titles?

7 MR. GRATZ: Lacks foundation,
8 incomplete hypothetical.

9 You can answer.

10 A. So -- I mean, under your
11 assumptions, which are we have a hard cover
12 book, and later on we have a paperback book
13 which displaces sales by the hard cover
14 back -- hard cover edition but also generates
15 more revenue than the hard cover edition, if
16 that happens, then just looking at sales of
17 the hard cover edition provides a -- gives me
18 an answer that does not reflect the sales of
19 the title.

20 THE REPORTER: Counsel, are we
21 going to take a break soon? I'm going
22 to need one fairly soon.

23 MS. STEINMAN: Yes, we're going to
24 take a break right now.

25 THE VIDEOGRAPHER: Going off the

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1 record. The time is 6:00 p.m. This is
2 the end of Media Unit 5.

3 (Recess taken at 6:00 p.m. to 6:14 p.m.)

4 THE VIDEOGRAPHER: We're back on
5 the record. The time is 6:14 p.m. This
6 is the beginning of Media Unit 6.

7 BY MS. STEINMAN:

8 Q. Let's turn our attention, please,
9 to Exhibit 8, which is Dr. Jorgensen's expert
10 report, please.

11 A. Okay.

12 Q. Did you review Dr. Jorgensen's
13 expert report? Did you read it?

14 A. I did not read it very carefully.
15 I looked it over.

16 Q. And Dr. Jorgensen looks at the
17 impact of the Internet Archive when the
18 National Emergency Library ended and when the
19 Internet Archive took down the works-in-suit
20 in June 2020, correct?

21 A. Yes, he looked at how --

22 Sorry. Can you repeat that?

23 Sorry.

24 Q. He looked at the impact of the
25 Internet Archive when the National Emergency

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1 Library ended and when the Internet Archive
2 took down the works-in-suit in June 2020?

3 A. Yeah, he looked at how library
4 living changed around those times, yes.

5 Q. Okay. And he also looked at the
6 Hachette works-in-suit, correct?

7 MR. GRATZ: Lacks foundation.

8 BY MS. STEINMAN:

9 Q. He looked at the difference in the
10 Q2 and Q3 2020 Hachette sales?

11 MR. GRATZ: Lacks foundation.

12 A. Are those the ones we've looked at
13 earlier today?

14 BY MS. STEINMAN:

15 Q. Yes.

16 A. He's looked at those, then, yes.

17 Q. Okay. And my understanding is
18 that Dr. Jorgensen has looked at the
19 following four data points, during Q2 and Q3
20 2020.

21 These data points are as follows:
22 One, he concludes that the 127 works-in-suit
23 had lower OverDrive checkouts than average.

24 MR. GRATZ: Objection, vague.

25 Misstates the content of the document.

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1 BY MS. STEINMAN:

2 Q. Okay. He finds that the
3 approximately 25 Hachette works-in-suit had
4 lower e-book sales and print sales in Q3 than
5 in Q2; he finds that in 2019, industry wide,
6 young adult book sales did not go down in Q3.

7 And his fourth data point is AAP
8 statistics that show that although e-book
9 sales across the market were going down in
10 Q3, the decline in e-book sales industry-wide
11 was nowhere near as steep as the Hachette
12 works-in-suit.

13 Is that a fair summary of his data
14 points?

15 MR. GRATZ: Lacks foundation.

16 A. I have to admit, I'd have to -- if
17 you can guide me to the exact spots where
18 these are in the report.

19 BY MS. STEINMAN:

20 Q. Sure. So some of these, I must
21 confess, are in his rebuttal report.

22 Did you read his rebuttal report?

23 A. I only read the summary of his
24 rebuttal report.

25 Q. Okay. So let's do it this way.

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1 Let's -- I'm going to give you, you know,
2 this as a hypothetical. So I'll do it again
3 because there was a lot to digest.

4 A. Thank you. Yeah, I was looking
5 while you were talking, too, so I appreciate
6 it.

7 Q. Yeah.

8 So let's assume that these are his
9 four data points. One, that the 127
10 works-in-suit had lower OverDrive checkouts
11 in Q3 2020 than the average books on
12 OverDrive.

13 A. Okay.

14 Q. Two, the approximately 25 Hachette
15 works-in-suit had lower e-book and print
16 sales in Q3 than Q2 2020.

17 A. Lower print and e-book sales you
18 said?

19 Q. Yes.

20 A. In Q3 of 2020 compared to?

21 Q. Q2.

22 A. Thank you.

23 Q. The third point is that in 2019,
24 young -- 2019, not '20, young adult book
25 sales across the industry did not go down in

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1 Q3.

2 A. Okay.

3 Q. And, four, that AAP's statistics
4 show that in Q3 2020 --

5 A. Uh-huh.

6 Q. -- there was a decline in e-book
7 sales, but it was only a 3 percent decline,
8 whereas the 25 Hachette works-in-suit had a
9 10 percent decline on average in e-book
10 sales.

11 A. Okay.

12 Q. And let's assume that
13 Dr. Jorgensen did not do any further
14 controls.

15 A. Okay.

16 Q. Okay. Assuming those facts, which
17 I understand may or may not be accurate, but
18 assuming those facts, do you think that is
19 sufficient data to determine the impact of
20 the Internet Archive on the plaintiffs'
21 sales?

22 MR. GRATZ: Objection, vague,
23 incomplete hypothetical.

24 A. These data alone -- now, again, I
25 apologize, I probably should have spent more

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1 time on the report.

2 These data just by themselves, I
3 would have to -- I would have to think hard
4 about where -- how we can get the -- a causal
5 relationship off the Internet Archive on --
6 on sales in general.

7 BY MS. STEINMAN:

8 Q. And is that because there are
9 other explanations of what might have caused
10 these sales declines for the plaintiffs'
11 works?

12 MR. GRATZ: Lacks foundation and
13 vague in its reference to the prior
14 question.

15 A. Yeah, so -- sorry. So this by
16 itself could be explained by -- these trends
17 can be explained by several or by -- you
18 know, by varying differences, you know,
19 across publishers. Now, I don't know what
20 those differences could be.

21 BY MS. STEINMAN:

22 Q. Okay. Let's look at Jeff Prince's
23 report, which is Exhibit 7.

24 A. Uh-huh.

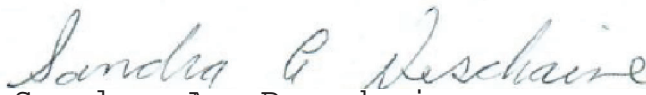
25 Q. And let's go to paragraph 96.

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1 COMMONWEALTH OF MASSACHUSETTS
2 SUFFOLK, SS.

3
4 I, Sandra A. Deschaine, Registered
5 Professional Reporter and Notary Public
6 within and for the Commonwealth of
7 Massachusetts at large, do hereby certify
8 that the Zoom videotaped deposition of Imke
9 C. Reimers, Ph.D., in the matter of Hachette
10 Book Group, Inc., et al., vs. Internet
11 Archive, et al., via Zoom, on June 3, 2022,
12 taken and transcribed by me; that the witness
13 provided satisfactory evidence of
14 identification as prescribed by Executive
15 Order 455 (03-13) issued by the Governor of
16 the Commonwealth of Massachusetts; that the
17 transcript produced by me is a true record of
18 the proceedings to the best of my ability;
19 that the witness is reading and signing; that
20 I am neither counsel for, related to, nor
21 employed by any of the parties to the action
22 in which this deposition was taken, and
23 further that I am not a relative or employee
24 of any attorney or counsel employed by the
25 parties thereto, nor financially or otherwise
interested in the outcome of the action, on
this 5th day of June 2022.



Sandra A. Deschaine
Registered Professional Reporter

My Commission Expires:
July 5, 2024